IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8600 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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DY CONSERVATOR OF FOREST EXTENSION

Versus

KACHARABHAI KARSANBHAI MASAR

Appearance:

1. Special Civil Application No. 8600 of 1991

MR MK DAGLI, AGP for Petitioners

MR DS VASAVADA for Respondent

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 14/08/2002

ORAL JUDGEMENT

By filing this petition under Article 226 of the Constitution, the petitioners have challenged legality of Award and Order dated June 18, 1991, passed by the Labour

Court, Ahmedabad, in Reference (LCA) No. 2062 of 1986, whereby the petitioner no.2 is directed to reinstate the respondent in service with full back wages.

2. The respondent was employed by the petitioner no.2 as Chokidar. The respondent was supposed to lookafter the saplings in the Nursery situated at Khedbrahma. It was his case that though he had rendered continuous service of two years, his services were abruptly brought to an end on July 1, 1986, without following the procedure prescribed in the Industrial Disputes Act, 1947. It was also his grievance that after his discharge from service, the petitioner no.2 had continued to employ those persons as Chokidars, who were junior to him. Feeling aggrieved by the action of the petitioner no.2 in relieving him from service, the respondent raised dispute regarding illegal termination of his services before the Assistant Labour Commissioner, Himatnagar. On failure of conciliation proceedings, reference was made to the Labour Court at Ahmedabad for adjudicating the dispute regarding legality of termination of services of the respondent. The dispute referred to the Labour Court was registered as Reference (LCA) No. 2062 of 1986. The respondent filed his Statement of Claims at Exh.4 to which the petitioner no.2 filed written statement at Exh.6. The respondent examined himself at Exh.9 and produced relevant documents in support of his case; whereas the petitioner no.2 examined himself at Exh.17 and produced documents in support of the averments which were made in the written statement.

3. On appreciation of evidence adduced by the parties, the Labour Court deduced that it was proved by the respondent that he had put in continuous service of more than 240 days and that after his discharge from service, the petitioner no.2 had continued to employ those who were junior to him. The Labour Court found that before relieving the respondent from service, the petitioner no.2 failed to comply with the provisions of the Industrial Disputes Act, 1947 and, therefore, termination of services of the respondent was illegal. In view of the above-referred to conclusions, the Labour Court by Award and Order dated June 18, 1991, has directed the petitioner no.2 to reinstate the respondent in service with full back wages, which has given rise to the present petition. The petition was admitted by an order dated December 4, 1991, and direction to reinstate the respondent is not stayed, but stay as to back wages is granted. Thus, the respondent is in service of the petitioner no.2

4. Heard the learned counsel for the parties. Though the petition is filed under Article 226 of the Constitution, in substance it will have to be regarded as petition under Article 227 of the Constitution, as it is directed against Award of the Labour Court. The plea that the respondent was employed as a daily wager for a stipulated period till completion of the Project sanctioned by the Government and, therefore, is not entitled to reinstatement in service, has no substance. It is true that such a plea was raised by the petitioner no.2 in the written statement which was filed before the Labour Court at Exh.6, but Mr. B.M.Gandhi, the then Range Forest Officer, who was examined at Exh.17, could not substantiate the said plea. No evidence worth the name was produced before the Labour Court to establish that the Project, in which the respondent was employed, was of a limited duration, or that on grant being stopped by the Government, the Project was abandoned, or that the respondent was relieved from service on completion of Project within the time stipulated by the Government. It is well settled that the pleadings, can never be a substitute for proof of the facts averred. The defence that the respondent was employed only for a particular Project and on Project being over, he is not entitled to reinstatement, has not been proved by the petitioner no.2. Under the circumstances, the said plea cannot be accepted and is hereby rejected.

5. The question whether the respondent had put in more than 240 days of continuous service or not, is essentially a question of fact. The Labour Court, on appreciation of evidence of the respondent as well as that of Mr.Gandhi and the documentary evidence on record, has held that it was proved by the respondent that he had put in continuous service of more than 240 days. The learned counsel for the petitioners has failed to point out as to how this finding of fact recorded by the Labour Court is erroneous. In view of the limited jurisdiction available to the High Court under Article 227 of the Constitution, the finding of fact viz. the respondent had put in 240 days of continuous service, is not liable to be interfered and is hereby upheld. It is an admitted fact that before terminating the services of the respondent, the petitioner no.2 had not complied with the provisions of the I.D.Act and had continued in service those who were junior to the respondent. As the termination of services of the respondent was illegal and arbitrary, the direction to the petitioner no.2 to reinstate the respondent in service, cannot be said to be illegal at all and is hereby confirmed.

6. However, having regard to the facts of the case, it is evident that the Labour Court was not justified in directing the petitioner no.2 to reinstate the respondent in service with full back wages. No evidence was led by the respondent to establish that he was not gainfully employed during the interregnum period. Normally, a daily wager would not be entitled to back wages. Under the circumstances, that part of the Award by which the petitioner no.2 is directed to pay full back wages to the respondent, is liable to be set aside.

For the foregoing reasons, the petition partly succeeds. The direction given by the Labour Court to the petitioner no.2 to reinstate the respondent in service,is hereby upheld. The direction given by the Labour Court to the petitioner no.2 to pay full back wages to the respondent, is hereby set aside. Rule is made absolute accordingly, with no orders as to costs. Ad-interim relief granted earlier is hereby vacated.

(J.M.Panchal,J.)

(patel)